



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
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Salt Lake City, UT 84145-0155
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IN REPLY REFER TO:
3100 / (UT-922)

March 23, 2007

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DECISION

Pam Miller	:	Protest to the Inclusion of Five
578 Cedar Lane	:	Parcels in the May 16, 2006
Price, Utah 84501	:	Competitive Oil and Gas Lease Sale

Protest Denied

On March 31, 2006, the Bureau of Land Management (BLM) provided notice that 295 parcels of land would be offered in a competitive oil and gas lease sale on May 16, 2006. The notice also indicated that the protest period for the lease sale would end May 1, 2006. In a letter received by BLM on May 1, 2006, Pam Miller (Miller) protested the inclusion of the following five parcels of land all of which are located on public lands administered by BLM's Vernal Field Office (FO):

UT0506-223 UT0506-224 UT0506-225 UT0506-226 UT0506-263

The five protested parcels were part of a list of 24 parcels sent to the Vernal FO for oil and gas leasing recommendations for the May 2006 oil and gas lease sale. The Vernal FO prepared numerous staff specialist reports and a "Documentation of Land Use Plan Conformance and NEPA Adequacy" (DNA) for all parcels. The Vernal FO manager recommended leasing 13 parcels in their entirety, deferring leasing on four parcels, and leasing portions of remaining seven parcels while deferring the remaining portions. The five protested parcels included approximately 6,962 acres in the Nine Mile Canyon area. The Vernal FO recommended leasing 4,360 acres, and deferring leasing on the remaining 2,602 acres, within these five parcels.

The basis for the Miller protest is that development of the protested leases would: compromise the value of the Nine Mile Canyon Area of Critical Environmental Concern (ACEC) and the Nine Mile Canyon National Register District; impact the visual qualities of the Nine Mile Canyon Back County Byway; impact fragile archaeology sites; and be contrary to BLM efforts to nominate Nine Mile Canyon to the National Register of Historic Places, the existing Nine Mile Canyon Management Plan and the Nine Mile Canyon Interpretive Plan. Miller also states that she has spoken to BLM employees who have indicated there would be no surface occupancy provisions on leases in the bottom of Nine Mile Canyon, and she questions the logic of BLM selling leases "they won't allow industry to develop".

The Miller protest is unsupported by any citation to legal authority and does not allege that BLM violated any specific law or policy in offering the protested parcels. The concerns raised in the protest are addressed below.

Nine Mile Canyon Potential ACEC Issues

Of the 6,962 acres in the protested parcels, 2,602 acres were deferred from the May 2006 lease sale to protect the canyon pending completion of consideration of ACEC designation in the Vernal RMP. In the Deferred Parcel Table of the Vernal FO leasing recommendations, BLM indicates that the deferred portions of the parcels are below the rims of the canyon areas, contain floodplains, steep slopes, critical soils, and could be accessed only from the bottom of the canyon and its side canyons where such resources could be affected. On page 6 of the DNA, BLM concludes that in the remaining portions of the parcels, those that are above the rims and can be accessed from existing roads other than in the bottom of the canyon, existing management constraints (detailed in the preliminary sale list, e.g., application of the cultural resource protection stipulation, avoidance of slopes in excess of 40 percent [nearly all of parcel UT0506-223] etc.) would be sufficient to protect the relevant and important values of the potential ACEC.

Since BLM has deferred leasing in those portions of the protested parcels that are within the canyon, BLM reasonably concludes that existing management constraints would be sufficient to protect relevant and important values, including cultural resources, outside of the canyon system. The portions of the protested parcels that were offered are in areas that even under the most restrictive alternative in the Vernal RMP (Alternative C), would be open to oil and gas leasing with either controlled surface use or standard stipulations, rather than closed to leasing. Therefore, BLM may lease the protested parcels without affecting ACEC values in the Nine Mile Canyon potential ACEC. The protest regarding impacts on the Nine Mile Canyon potential ACEC is denied.

Proposed Nine Mile Canyon National Register District Issues

There is no official “proposed” boundary for the Nine Mile Canyon National Register District. However, the record shows that the areas with the highest known density of cultural resources were deferred from leasing. For the protested parcels the Vernal FO archaeologist in Item D.3, Page 5 of the Vernal FO DNA, reports that the Area of Potential Effect for the May 2006 Oil and Gas Lease Sale is the lease boundary. Page 5 of the Vernal FO DNA also reports that “Of the parcels reviewed, the VFO archaeologist determined that leasing would not adversely affect cultural resources or historic properties due to regulatory safeguards that are in place to protect significant historic properties. Page 6 of the Consolidated Interdisciplinary Team Review attached to the DNA reports that based on existing data from inventories, site overlays, pertinent analytic studies and archaeological reports as well as 25 years of professional experience, that if leasing occurs within the framework of existing land use plans, NEPA analysis and section 106 consultation (which is the case for the May 2006 lease sale) a “No Adverse Effect” determination is appropriate. Consultation occurred pursuant to Section 106 of the National Historic Preservation Act (NHPA) for all parcels considered for the lease sale. An initial consultation letter was sent to the Utah State Historic Preservation Officer (SHPO) on February 23, 2006. On March 10, 2006 a supplemental letter was sent to SHPO and on March 31, 2006 a letter was received

from SHPO concurring with the finding of No Adverse Effect to historic properties. Therefore, the values of the “proposed” Nine Mile Canyon National Register District would not be compromised. The protest regarding impacts on the Nine Mile Canyon National Register District is denied.

Additionally, a National Register boundary does not preclude leasing or energy development. The National Register of Historic Places is the official federal list of properties that are significant in American history, architecture, archeology, and engineering. There are no restrictions that come with a National Register listing, and oil and gas leasing and development is not prohibited by designation of a National Register District (National register bulletin 16, Guidelines for completing National Register of Historic Places Forms, Part A, 1991).

Nine Mile Canyon Back Country Byway Issues

Miller alleges that some areas of the parcels are in the canyon bottom proper, and others are in areas that will impact the visual qualities of the Nine Mile Canyon Back Country Byway.

Those portions of Parcels 223, 224, 225, 226, and 263 that were offered in the May oil and gas lease sale were not within the canyon bottom, as all areas within the canyon bottom were deferred, as were the canyon rim areas directly above the canyon bottom. Under standard lease terms the BLM retains the discretion to move operations up to 200 meters at the time an Application for Permit to Drill (APD) is filed. With proper location of facilities, they would not be easily visible from the Nine Mile Canyon Backcountry Byway. The Recreation and Visual Resource sections of the Consolidated Resource Review attached to the Vernal FO DNA indicate that after review of maps, GIS data, etc., the existing NEPA analysis found in the alternatives of both the Book Cliffs and Diamond Mountain Resource Management Plans (RMP) and Environmental Impact Statements (EIS) is adequate for this proposed action of leasing. Therefore, it is reasonably concluded that leasing the offered portions of the protested parcels would not noticeably impact visual resources along the Nine Mile Canyon Backcountry Byway. The protest regarding impacts on the Nine Mile Canyon Back Country Byway is denied.

Impact on Fragile Archaeology Sites

The protest letter states that all of the protested parcels are situated to contain plentiful and fragile archaeology sites.

Compliance with the NHPA as a federal law is required of both BLM and lessees. As stated above, the record shows that the areas with the highest known density of cultural resources were deferred from the May 2006 lease sale. BLM made a finding of “No Adverse Effect” to historic properties and the Utah SHPO concurred with this finding.

The following has been included as a formal lease stipulation for all of the lease parcels subject to this sale:

“This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it

completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.”

The protest regarding impacts on fragile archaeology sites is denied.

Nine Mile Canyon Nomination as a National Register Site

The protest letter contends that the leasing action is contrary to BLM efforts to nominate Nine Mile Canyon to the National Register of Historic Places. However, because the protest does not provide any specific information or explanation of the inconsistencies of the leasing decision and this nomination BLM cannot respond to it. However, the Deferred Parcel Table in the Vernal FO leasing recommendations indicates that the deferred portions of the parcels are below the rims of the canyon areas, contain floodplains, steep slopes, critical soils, and could be accessed only from the bottom of Nine Mile Canyon and its side canyons where such resources would be affected. Since BLM deferred the portions of the protested parcels in the canyon bottom to which the nominations and plans identified in the protest apply, leasing the offered portions of the protested parcels would not be inconsistent with plans to protect the canyon bottom areas. Additionally, BLM has not made a formal nomination to place Nine Mile canyon on the National Register Site of Historic Places. The protest regarding impacts to this nomination process is denied.

Nine Mile Canyon Management Plan

The protest letter contends that the leasing action is contrary to the existing Nine Mile Canyon Management Plan developed by the Price FO. The “Nine Mile Canyon Recreation and Cultural Area Management Plan” (1995) was a 10-year plan that was focused on management of visitor-based recreation and preservation and interpretation of cultural resources, but did not modify management of other resources including oil and gas leasing categories (see Purpose and Scope of the Plan, p. 5 of the plan). Therefore, leasing of oil and gas is fully compatible with that plan, and the protest regarding conflicts with this plan is denied.

Nine Mile Canyon Interpretive Plan

The protest letter contends that the leasing action is contrary to the Nine Mile Canyon Interpretive Plan. The “Nine Mile Canyon Interpretive Plan” (2000) is a working draft prepared by the College of Eastern Utah. It is not an official government plan and is non-binding on BLM decision-making. The protest regarding conflicts with this plan is denied.

No Surface Occupancy Leases

The protest also questions the logic of selling leases that industry will not be able to develop. None of the offered portions of the protested parcels were offered under terms of no development or surface occupancy. However, BLM’s Land Use Planning Handbook (H-1601-1 – (Public) Appendix C, page 23, H. Fluid Minerals: Oil and Gas, Tar Sands, and Geothermal Resources,

Land Use Plan Decisions.) directs that “BLM identify the following, consistent with the goals and objectives for natural resources within the planning area (refer to H-1624-1):

1. Areas open to leasing, subject to existing laws, regulations, and formal orders; and the terms and conditions of the standard lease form.
2. Areas open to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions. (These are areas where it has been determined that moderately restrictive lease stipulations may be required to mitigate impacts to other land uses or resource values.)
3. Areas open to leasing, subject to major constraints such as no-surface-occupancy stipulations on an area more than 40 acres in size or more than 0.25 mile in width. (These are areas where it has been determined that highly restrictive lease stipulations are required to mitigate impacts to other lands or resource values. This category also includes areas where overlapping moderate constraints would severely limit development of fluid mineral resources.)
4. Areas closed to leasing. (These are areas where it has been determined that other land uses or resource values cannot be adequately protected with even the most restrictive lease stipulations; appropriate protection can be ensured only by closing the lands to leasing.) Identify whether such closures are discretionary or nondiscretionary; and if discretionary, the rationale.”

As stated in Item 3., it is appropriate to lease under terms of No Surface Occupancy where highly restrictive lease stipulations are required. Therefore, BLM can logically offer leases under the term of No Surface Occupancy, but did not do so for the protested parcels. The protest is therefore denied in regards to the logic of issuing leases in areas where development will not be allowed.

Conclusion

The Miller protest fails to identify any procedural or legal error in BLM’s decision to offer parcels UT0506-223, UT0506-224, UT0506-225, UT0506-226, and UT0506-263 in the May 2006 oil and gas lease sale. The record shows that BLM considered the issues raised by the Miller protest, and offered the subject parcels in accordance with applicable law and policy.

BLM has received sale offers on the five parcels addressed in this decision. Resolution of other protests may dictate whether or not the lease for a particular parcel will be issued.

This decision may be appealed to the Interior Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR § 4.21; 58 FR 4939, January 19, 1993) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay also must be submitted to each party named in this decision and to the Interior Board of Land Appeals Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 at the same time they are submitted to this office. Copies of the notice of appeal, petition for stay and any supporting documentation also must be filed with the Office of the Regional Solicitor, U.S.

Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, Utah 84138-1180, not later than 15 days after filing the documents with the authorized officer and/or IBLA (see 43 CFR § 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success of the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ Selma Sierra

Selma Sierra
State Director

Enclosures

1. Form 1842-1 (2pp)
2. List of purchasers (1 p.)

cc: Office of the Solicitor, 125 So. State St., Ste 6201, SLC, UT 84138
List of Purchasers

bc: WO-310, 501LS
Vernal FO
Reading Files, UT-910, UT-930, UT-922, UT-952
Case Files

J-Howard:dab 03/14/07 (Miller Response – May 16 06 OG Sale)

Enclosure 1
Form 1842-1

Enclosure 2
List of Purchasers

<u>Parcels</u>	<u>Purchaser</u>
0506-223	LandGroup 2825 E. Cottonwood Pkwy, #500 Salt Lake City, UT 84121
0506-224	LandGroup 2825 E. Cottonwood Pkwy, #500 Salt Lake City, UT 84121
0506-225	White Land Services, LLC 1051 East Fairway Drive North Salt Lake, UT 84054
0506-226	Turner Petrol Land 8438 South 1275 East Sandy, UT 84094
0506-263	Carlson, Gary B. 55 South 500 East Kaysville, UT 84037